

MINUTES OF THE TENTH MEETING OF THE CROSS PARTY GROUP ON MENTAL HEALTH ON 26 MARCH 2014 IN THE SCOTTISH PARLIAMENT

1. PRESENT

Malcolm Chisholm MSP (Convenor); Mark MacDonald MSP (Convenor) ; James Hendry (Secretary); Fiona Barlow; Shaben Begum; Shane Buckeridge; Thomas Byrne; Alison Cairns; Callum Chomczuk; Jude Clarke; Alastair Cook; Alastair Cooper; Mig Coupe; Doreen Graham; Isobel Kerr; Tom Jennings; Richard Jones; Donnie Lyons; Fiona MacLeod MSP; Robert MacBean; Willie MacFadyen; Kirsty McGrath; Alastair Moodie; Andrew Muir; Joyce Mouriki; Chris O Sullivan; Carolyn Roberts; Richard Simpson MSP; Fiona Sinclair; Tom Wightman; David Wright.

In attendance

Karen Addie (Minutes)

2. APOLOGIES

Apologies for absence were received from: Anne-Marie Barry; Joanna Gordon; Martin Adam; Ilena Day; Traci Kirkland; Chrys Muirhead; Alison McInnes MSP; Brian Magee; Stacey Webster; Frances Simpson; Stephen McLelland; James Kiddie; Roch Cantwell; Susan Donnelly; Cath Logan.

3. MINUTE OF THE MEETING HELD ON 5 DECEMBER 2013 (previously circulated)

The minutes of the meeting held on 5 December were accepted as an accurate record of the meeting.

4. PRESENTATIONS on THE DRAFT MENTAL HEALTH (SCOTLAND) BILL

Mark McDonald MSP introduced the presentations from: Kirsty McGrath (Scottish Government) ; Shaben Begum (SIAA); Joyce Mouriki (VOX); Chris O Sullivan (Mental Health Foundation); Carolyn Roberts (SAMH); Alastair Cook (RCPsych) and Callum Chomczuk (BPS) .

Responses to the Bill from these organisations and copies of some of the presentations are attached to these minutes.

Kirsty McGrath – Scottish Government

Kirsty highlighted some specific areas of the Bill which had elicited the most responses:

2 medical reports for a CTO – the draft Bill suggests that in future one medical report may be sufficient for a CTO but a GP could still offer to do a second report. If it is not possible to get a GP then the patient can still instruct an independent medical report.

Advance statements- a duty will be placed upon a Health Board to record advance statements and the MWC will be asked to keep a central register of statements if this part of the Bill is passed.

On named persons, there is some concern that currently their role is not well understood and is more complex than just being the patient's representative. It can be difficult if the named person is a close relative and the relationship with the patient deteriorates. In future it is hoped the named person will have to agree and understand what the role involves. The Tribunal will retain the right to appoint a named person and this has proved to be controversial.

Victim Notification scheme – there are plans to extend this to victims of mentally disordered offenders. The Government consulted on this previously and most respondents were in favour of it. The MWC have real concerns about this and have been in discussion with the Bill team about it.

Kirsty went on to confirm that the Government will look carefully at these areas of the Bill and listen to all of the respondents' concerns.

Donnie Lyons – Mental Welfare Commission

Donnie stated that the MWC had suggested a lot of amendments to the Bill. They feel strongly that CTOs cannot be granted on the basis of one medical report and that GPs are not an adequate safeguard, the second report must be from a psychiatrist who is independent of the process. There are problems with conflicts of interest.

The MWC broadly agrees with the proposed changes to advance statements and if they are keeping a register of statements in the future they would be extremely careful of who they share them with.

The MWC has some concerns about named persons, particularly in relation to the Tribunal.

They also have real difficulty with the victim notification scheme. For very serious offences involving restricted patients, they have no issue but can see scenarios where people with mental health problems have committed relatively minor offences that might not even result in a custodial sentence and yet be subject to victims having information about them. Donnie was certain this is an equality and rights issue and is causing anxiety to patients and carers. This view was shared by other stakeholders present at the meeting who thought it may increase stigma and discrimination.

The MWC responded to Question 11 on Cross Border transfers by stating their concern that a patient transferred from, for example, England to Scotland may lose a right of appeal to the Tribunal because the Act specifies that no appeal can be made within three months of the order being granted. Cross border regulations should be amended to allow this.

The regulations in respect of removing someone from Scotland give a right of appeal to the patient but not the named person. This is an anomaly as the named person can appeal a decision to transfer the patient between hospitals in Scotland.

The MWC raised an additional problem regarding Responsible Medical Officers (RMOs) employed by independent hospitals. Currently they could not make a recommendation for someone to be detained; however, they can rule the detention can continue. If the detention order is to be continued the MWC are clear it should be done by an Approved Medical Practitioner (AMP) not employed by the independent hospital.

Joyce Mouriki – Voices of Experience

Joyce expressed disappointment in what has changed since the legislation first came in. VOX are pleased that the named persons must in future agree and understand the role but are disappointed at the loss of automatic inclusion of a named person as a party.

VOX also share the MWC concerns about the victim notification scheme and are against CTOs being granted with just one medical report.

Shaben Begum – Scottish Independent Advocacy Alliance (SIAA).

Shaben expressed the disappointment of members of the SIAA that advocacy is not mentioned at all in this draft Bill. SIAA believe a rethink is required regarding the responsibilities of Local Authorities to provide advocacy for those who need it. Some advocacy provision has been affected by cuts to local authority services and in some places in Scotland access to advocacy is inadequate. The Bill represents a lost opportunity to strengthen access and quality of advocacy.

Carolyn Roberts – Scottish Association of Mental Health (SAMH)

Carolyn outlined some the SAMH response: - they welcomed the improvements to named persons; timescales for Tribunals; better support for parents and better support for those with communication difficulties. SAMH would have liked to have seen the Millan Principles restated in the Bill. Carolyn echoed the concerns of MWC in regard to one medical report, victim notification scheme and named persons.

In addition, they would have liked to see more detail on the proposal to extend nurses' power of detention to 3 hours and did not agree this was necessary.

Callum Chomczuk – British Psychological Society

Callum highlighted concerns of the Society that differ from what had already been covered by the other speakers.

They are concerned there is no mention of what happens when advance statements are out of date or are contradictory. The language around who will be able to access statements in the future is too vague. They would suggest that the list of who provides second medical reports be extended as it may be appropriate in some cases to use a clinical psychologist.

Chris O Sullivan – Mental Health Foundation

MHF have focussed on inequalities in their response. Overall they found it difficult to pick through all the various documents associated with the consultation on the Bill and thought it would be better if something had been produced by the Government that made it easy to see at a glance what McManus recommendations were, which of these had been incorporated in the Bill and which had not.

Specific concerns not already raised were: -

Sections 25-31 about local authorities and the public duty on non-discrimination- MHF would like to see this looked at again in light of integration of health and social care.

They believe only the latest advance statements should be on the register and statements more generally need to be promoted better, particularly with older and younger people.

Named persons- the McManus recommendation was better. The Bill should also enable young people to appoint a named person and VOX had suggested a young person could have two named persons, one of which could be their parent.

Alastair Cook – Royal College of Psychiatrists in Scotland

Most of the points raised by the College were also raised by the other organisations. There had not been a great deal of debate amongst College members about the Bill. Alastair acknowledged the concerns about the one medical report but added it is often difficult to get GPs fully engaged in this work. It would be an improvement if the Mental Health Tribunal could undertake to facilitate independent medical reports. Joyce Mouriki suggested the MHTS are not keen on this. The College supports others' concerns about the victim notification scheme and are pleased the MWC has discussed this with the Scottish Government.

Malcolm Chisholm took over the Chair of the meeting and opened up to the floor for questions.

Fiona Sinclair stated that people with autism cannot make an advanced statement and this has been glossed over.

Malcolm asked Kirsty McGrath if amendments not in the Bill can still be proposed at later stages of the progress of the Bill. Kirsty replied that this is an option for those who wish to make suggestions not covered in the Bill so far. Malcolm proposed to Andrew Muir and Fiona Sinclair that they propose amendments via the Health Committee and Richard Simpson MSP agreed they could contact him about this. Written evidence will be asked for by the Health Committee over the coming months and the Committee will also seek oral evidence from specific organisations or individuals.

Richard Simpson added his own thoughts on the Bill and said he thought it was strength of the Scottish Parliament that they look again at legislation already passed and refine it if it is necessary. He agreed with SAMH it would be good to see the Millan principles restated. On the topic of medical reports he acknowledged the difficulty of engaging GPs as some feel constrained by their relationship to the patient. Often GPs have little mental health training and medical reports may need to be confined to those specific networks or individual GPs with a special interest in this area.

Thomas Byrne commented that regarding Sections 25 and 26 of the Act as it stands now it would have been good to see something included with a focus on recovery.

Fiona Sinclair expressed her concern that the debate at the group was very limited and was not allowing alternative views on the legislation to be aired. Malcolm Chisholm responded by saying Fiona and others had been permitted to participate fully in the question and answer session and she had adequate time to air her views to the group. Malcolm went on to say if the people with alternative viewpoints wanted to raise their concerns they would have to convince MSPs to do so and several channels exist in the Parliament to enable people to put forward their issues.

Kirsty McGrath confirmed the timescales for the Bill: - the Health Committee will start considering the Bill before the summer recess of Parliament and it is hoped it will be passed after the referendum in the Autumn. There will be ample opportunity for amendments to be suggested in the coming months and any aspect of the Act can be looked at. Kirsty welcomed the suggestion from MHF and was positive they could use the Government response to the consultation to outline what has happened since McManus.

There was a short discussion on issues not included in the Bill that stakeholders were concerned about. Joyce Mouriki stated that there is a broader agenda to be considered and that is in reference to Adults with Incapacity. The Law Commission in Scotland is taking a view on the Supreme Court decision on deprivation of liberty but this has been delayed.

There will be a working group set up by the Scottish Government to look at amending the Adults with Incapacity Act.

Carolyn Roberts mentioned employability and social inclusion and although Local Authorities have a duty in relation to this it is often not in anyone's job to follow it up and make sure the provisions have been enacted.

David Wright fully agreed with the SIAA responses in terms of access to advocacy and said this was a particular problem in more rural areas where funding is an issue. The Mental Health Act should promote independent advocacy as a right.

Malcolm Chisholm brought the meeting to a close and thanked all who had contributed.

5. DATE AND TIME OF NEXT MEETING

12 June at 12.30pm in **CR 2**.